

1 The Honorable Richard A. Jones
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VEEDER-ROOT FUELQUEST, LLC,

Plaintiff,

v.

ANGELA WISDOM, an individual, and
LEIGHTON O'BRIEN, INC., a
corporation,

Defendants.

Civil Action No. 2:21-cv-00352-RAJ

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiff Veeder-Root Fuelquest LLC's ("Plaintiff") motion for temporary restraining order against Defendants Angela Wisdom and Leighton O'Brien, Inc.¹ ("LOI") (collectively "Defendants"). Dkt. # 3. The Court

¹ Defendants contend that LOI is not Ms. Wisdom's employer and is therefore an improper party to this case. Dkt. # 20 at 1. Plaintiff responded in oral argument that it

1 held a hearing on the motion on March 24, 2021. Having considered the parties' oral and
 2 written arguments, the record, and applicable law, the Court **DENIES** Plaintiff's motion
 3 for a temporary restraining order and **GRANTS** Plaintiff's request for a hearing on a
 4 preliminary injunction.

5 II. BACKGROUND

6 Plaintiff is a fueling software and solutions provider in the retail and wholesale
 7 fueling industry. Dkt. # 1 ¶ 14. Ms. Wisdom was hired by Plaintiff as a Senior Director
 8 of Sales in the fall of 2017. *Id.* ¶ 20. In May of 2020, her role was expanded to include
 9 marketing responsibilities. *Id.* As a result of her responsibilities and duties, Plaintiff
 10 alleges that Ms. Wisdom had access to Plaintiff's "confidential, proprietary, and trade
 11 secret information," which included, but was not limited to the following:

12 business strategy plans, sales strategies, pricing plans and information, the
 13 Company's pipeline, customer information (including which customers had
 14 purchased which services) information regarding prospects (including details of
 15 anticipated deals, and how far along each prospective deal was), marketing
 16 strategies, development plans, strengths and weaknesses of certain Insite360
 17 products and services, in-depth incentive and commission program information
 giving visibility into how the Company creates the necessary behaviors to drive
 growth, and more.

18 *Id.* ¶ 22.

19 When first hired, Ms. Wisdom signed a Nondisclosure and Assignment Agreement
 20 ("NDA") on or about October 28, 2017. *Id.* ¶ 22. The NDA prohibited Ms. Wisdom
 21 from directly or indirectly using or disclosing to anyone outside the company any of
 22 Plaintiff's trade secrets or confidential information, including customer lists, pricing,
 23 margins, and more. *Id.* ¶ 23. In mid-2019, Ms. Wisdom executed a new restrictive

24 would amend its complaint accordingly, but that it sought to enjoin Ms. Wisdom, who is
 25 a named defendant, for purposes of this motion. The Court will consider this motion with
 26 respect to an injunction against Ms. Wisdom, but instructs the parties to amend the
 complaint to include the proper defendants.

1 covenants agreement (“RCA”) with Plaintiff in exchange for, *inter alia*, an increase in
2 salary and equity. *Id.* ¶ 24-26.

3 On January 12, 2021, Ms. Wisdom informed Plaintiff that she was accepting a
4 position with Leighton O’Brien, Inc. (“LOI”), a direct competitor to Plaintiff, but
5 represented that her role was non-competitive with respect to the products she would be
6 selling and the territory in which she would be active. *Id.* ¶ 43. Plaintiff permitted Ms.
7 Wisdom to remain in her job for three weeks, until February 1, 2021, to facilitate off-
8 boarding and transition her responsibilities. *Id.* ¶ 47.

9 On February 1, 2021, LOI issued a press release dated February 2, 2021
10 announcing Ms. Wisdom’s hire and describing her role as directly competitive with her
11 role with Plaintiff. *Id.* ¶ 48. On February 3, 2021, Plaintiff sent Ms. Wisdom a letter
12 reminding her of her continuing obligations to Plaintiff and requesting that she sign and
13 return a draft certification confirming that her role would not be competitive. *Id.* ¶ 51.
14 The following day, Plaintiff sent a copy of the letter to Reed Leighton, CEO of LOI. *Id.*
15 ¶ 52. Mr. Wisdom did not respond to Plaintiff’s letter. *Id.* ¶ 57. The following week,
16 Plaintiff’s General Manager and Vice President, Rachel Collins, emailed Ms. Wisdom
17 asking her to call her to discuss the matter. *Id.* ¶ 20, 57. Ms. Wisdom did not respond.
18 *Id.* ¶ 57.

19 On February 4, 2021, several days after her employment with Plaintiff ended, Ms.
20 Wisdom mailed her company-issued devices back to Plaintiff. *Id.* ¶ 70. Her RCA
21 required her to return the devices promptly upon termination of her employment and no
22 later than two business days after termination. *Id.* ¶ 69. After receiving the devices on
23 February 9, 2021, Plaintiff sent them to an external forensic examiner to conduct an
24 analysis of each device. *Id.* ¶ 70.

25 The forensic examination revealed that Ms. Wisdom had performed a factory reset
26 of her computer on February 3, 2021. *Id.* ¶ 71. According to the examiner, the analysis

1 also revealed “hundreds of documents had metadata altered within an extremely short
 2 timeframe, suggesting that they were mass copied, deleted, or ‘backed up’ to another
 3 device” on several occasions during Ms. Wisdom’s final weeks with Plaintiff. *Id.* ¶ 72.
 4 The documents alleged included the following:

5 [C]onfidential information regarding hundreds of the Company’s customers,
 6 including revenue received for said customers, contract terms, which products or
 7 services the customers had purchased, and which [Plaintiff] sales executives were
 8 assigned to those customers; compensation data for the Company’s account
 9 executives, renewal executives, and other specialists, including compensation
 10 structure, commissions, and quotas; information regarding the Company’s
 11 territories; information regarding the [Plaintiff’s] pipeline, including specific
 12 opportunities with prospects, which products were being pitched, stage of contract
 13 negotiations, and anticipated contract value; and the [Plaintiff’s] growth goals for
 14 2021.

15 *Id.* ¶ 75.

16 Ms. Wisdom had retained internal documents from Plaintiff and saved them on her
 17 personal work computer, alleging that she had been asked to work after her employment
 18 and that she needed to keep confidential company documents on her personal computer
 19 for that purpose. *Id.* ¶ 77. Plaintiff disputes both of these statements. *Id.* ¶ 78.

20 Plaintiff’s outside counsel worked with counsel for Ms. Wisdom and LOI to try to
 21 resolve the dispute. *Id.* ¶ 63. On February 24, 2021, without notice to Plaintiff, Ms.
 22 Wisdom filed a declaratory judgment action in King County Superior Court naming
 23 Plaintiff as a defendant. *Id.* ¶ 64. On March 4, 2021, Ms. Collins was personally served
 24 with a copy of the lawsuit at her home, even though she was not a named party to the suit
 25 nor was she an authorized agent for service. *Id.* ¶ 68.

26 On March 15, 2021, Plaintiff filed a complaint and motion for temporary
 27 restraining order against Ms. Wisdom and LOI. Dkt. # 1, 3. On March 16, 2021,
 28 Defendants filed a notice of intent to oppose the motion. Dkt. # 16. The following day,
 29 the Defendants filed their response, Dkt. # 20, and the Court scheduled a hearing on the

1 motion for temporary restraining order for March 19, 2021. The parties subsequently
2 filed a stipulated motion to extend the deadline for reply and move the hearing date,
3 indicating that they were exploring “a potential resolution of their dispute without further
4 court involvement.” Dkt. # 24 at 2. The Court granted the motion and rescheduled the
5 hearing for March 24, 2021. On March 23, Plaintiff filed a reply indicating that the
6 parties had not reached a resolution. Dkt. # 26. The Court heard oral argument on March
7 24, 2021.

III. LEGAL STANDARD

Like a preliminary injunction, issuance of a TRO is “an extraordinary remedy never awarded as of right.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Under Federal Rule of Civil Procedure 65(b), a party seeking a TRO must make a clear showing (1) of a likelihood of success on the merits, (2) of a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) that the balance of hardship tips in her favor, and (4) that a temporary restraining order is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (articulating standard for preliminary injunction); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”).

IV. DISCUSSION

20 The Court begins its analysis with the second *Winter* prong, which requires
21 Plaintiff to show that there is a likelihood of irreparable harm in the absence of
22 preliminary relief. 555 U.S. at 20. Plaintiff claims that its business interests will suffer
23 irreparable harm if Ms. Wisdom is permitted to continue in her role with LOI. Dkt. # 3 at
24 13. The Court is unpersuaded. First, Plaintiff waited three weeks after Ms. Wisdom filed
25 an action for declaratory relief in King County Superior Court before it filed this lawsuit.
26 Plaintiff claims that this time lag was based on its belief that the parties discussions

1 would result in resolution without court intervention. However, over seven weeks have
2 now passed since Ms. Wisdom has been in her position with LOI and Plaintiff has failed
3 to provide any evidence demonstrating irreparable harm caused by Mr. Wisdom in her
4 new role, undermining its alleged need for immediate relief.

5 Plaintiff's alleged evidence of irreparable harm consists primarily of the results of
6 the forensic examination of Ms. Wisdom's work devices as well as her retention of
7 confidential spreadsheets on her personal computer. The Court agrees that this evidence
8 raises significant questions and concerns about Ms. Wisdom's activity and whether she
9 breached her restrictive covenants. But a showing of suspicious activity is insufficient to
10 establish a likelihood of irreparable harm. Indeed, Plaintiff provides no evidence and
11 makes no allegation that Ms. Wisdom has used or attempted to use any of Plaintiff's
12 confidential information or trade secrets in any way.

13 Plaintiff has failed to demonstrate a likelihood of irreparable harm requiring
14 immediate injunctive relief. A failure to establish one of the *Winter* prongs is fatal to a
15 motion for temporary injunctive relief. *A Woman's Friend Pregnancy Res. Clinic v.*
16 *Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018) (holding that a "plaintiff [must] make a
17 showing on *all four prongs* to obtain a preliminary injunction"). The Court therefore
18 need not consider the other *Winter* prongs to conclude that Plaintiff has failed to meet its
19 burden to obtain relief through a temporary restraining order.

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V. CONCLUSION

For the foregoing reasons, Plaintiff's motion for temporary restraining order is **DENIED**. The Court reserves consideration of Plaintiff's motion for preliminary injunction and grants Defendants' request for a hearing pursuant to Local Rule 7(d)(3). Local Rules W.D. Wash. LCR 7(d)(3). The Court will contact the parties to schedule a hearing via Zoom videoconference on the motion for preliminary injunction.

DATED this 26th day of March, 2021.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge